

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
EXCEL TELECOMMUNICATIONS, INC. )  
For a Waiver of Requirements in )  
HRS § 269-7(a) Associated with )  
Organizational Structure )  
Modification. )  
\_\_\_\_\_ )

DOCKET NO. 05-0125

DECISION AND ORDER NO. 21970

Filed August 5, 2005  
At 8 o'clock A.M.

Karen Higashi.  
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

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KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi.

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OF THE STATE OF HAWAII

In the Matter of the Petition of )	
EXCEL TELECOMMUNICATIONS, INC. )	Docket No. 05-0125
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HRS § 269-7(a) Associated with )	
Organizational Structure )	
Modification. )	
_____ )	

DECISION AND ORDER

By this Decision and Order, the commission grants EXCEL TELECOMMUNICATIONS, INC.'s ("Excel") request to waive the applicable requirement of Hawaii Revised Statutes ("HRS") § 269-7(a) in relation to Excel's organizational structure modification, described herein and consummated on October 31, 2004 ("Consummated Transaction"), subject to certain conditions, described below.

I.

Introduction

Excel requests that the commission waive the requirements set forth in HRS § 269-7(a) in relation to its October 31, 2004 Consummated Transaction.<sup>1</sup> Excel makes its request, pursuant to HRS § 269-16.9 and HAR § 6-80-135.

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<sup>1</sup>Excel's Petition for a Waiver of Requirements in HRS § 269-7(a) Associated with Organizational Structure Modification, filed on May 26, 2005 ("Petition"). Pursuant to the commission's June 17, 2005 directive, Excel supplemented its Petition by submitting an executed verification, pursuant to Hawaii Administrative Rules (HAR) § 6-61-17, on July 15, 2005.

Excel served copies of its Petition on the Consumer Advocate. The Consumer Advocate filed its Statement of Position on June 14, 2005 ("Statement of Position") recommending that the commission waive the regulatory requirements of HRS § 269-7(a), subject to a qualification, discussed below.

## II.

### Background

#### A.

##### Overview of Subject Entities

Excel is a public utility that holds a commission-issued certificate of authority ("COA") to provide intrastate telecommunications services within the State of Hawaii ("State" or "Hawaii") as a reseller and facilities-based carrier.<sup>2</sup> Excel is a privately held Texas corporation, and its principal place of business is located in Dallas, Texas.

Vartec Telecom, Inc. ("VarTec") is a Texas corporation with its principal place of business also in Dallas, Texas. VarTec is Excel's ultimate parent company, and is also authorized to provide resold intrastate telecommunications services in Hawaii.<sup>3</sup> Prior to October 31, 2004, Excel was directly controlled and wholly-owned by Excel Telephone, Inc. ("Excel

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<sup>2</sup>Decision and Order No. 19311, filed on April 19, 2002, in Docket No. 02-0026 ("Decision and Order No. 19311"); and see also, Amended Decision and Order No. 15551, filed on June 27, 1997, in Docket No. 97-0098. The commission also takes official notice of all commission records relating to Excel and Vartec, pursuant to HAR § 6-61-48.

<sup>3</sup>See, Decision and Order No. 19212, filed on February 22, 2002, in Docket No. 01-0418; and Decision and Order No. 18165, filed on October 30, 2000, in Docket No. 00-0320.

Telephone"), an unregulated subsidiary of and wholly-owned by Excelcom, Inc. ("Excelcom"). In turn, Excelcom is an unregulated subsidiary of and wholly-owned by VarTec Telecom Holding Company ("VarTec Holding"), which, in turn, is wholly-owned by VarTec. See Exhibit A attached hereto.

B.

Description of Consummated Transaction

On October 31, 2004, Excel's ultimate parent, VarTec, merged Excel Telephone into its sole shareholder, Excelcom. Excelcom is and will continue to be wholly-owned by VarTec Holding, which is and will continue to be wholly-owned by VarTec. Ultimately, the Consummated Transaction resulted in Excel being directly held by Excelcom. In support of its Petition, Excel describes the Consummated Transaction as follows:

1. The Consummated Transaction will "minimize the administrative burdens and increase efficiency for the involved corporations with no negative impact on Excel's operations, consumers, competitors or other external parties;"<sup>4</sup>
2. Because the only modification is the removal of Excel Telephone from the corporate organizational structure, "control of Excel will remain with Excelcom and ultimate control with VarTec, and Excel will continue

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<sup>4</sup>Petition at 2.

its usual operations with absolutely no impact to its customers, tariffs, or rates."<sup>5</sup>

Finally, Excel asserts that granting the relief requested in its Petition "benefits the public interest through increased efficiency realized through the merger of Excel's corporate parents, and as a result, improves Excel's ability to respond to its competition."<sup>6</sup>

B.

Consumer Advocate's Position

The Consumer Advocate concurs with Excel that the Consummated Transaction should be reviewed under HRS § 269-7(a), and recommends that we approve Excel's request for a waiver of the requirements of HRS § 269-7(a). In support of its recommendation, the Consumer Advocate, among other things, states:

1. Excel's customers, tariffs or rates are not expected to be impacted as a result of the organizational structure modification since Excel will continue its usual operations in the State;
2. The Consummated Transaction should be in the public interest for the reasons articulated in Excel's Petition; and
3. The entry of many telecommunications service providers in the Hawaii market may serve to

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<sup>5</sup>*Id.*

<sup>6</sup>*Id.*

mitigate any traditional public utility regulatory concerns that may result from the Consummated Transaction. Therefore, if there are any adverse consequences from the Consummated Transaction, consumers in Hawaii will have the option of selecting another service provider.<sup>7</sup>

In addition, the Consumer Advocate qualifies its recommendation by stating that because it did not receive a copy of Excel's revised tariff required under Decision and Order No. 19311, the commission should require Excel to immediately file copies of such revised tariff with the commission and the Consumer Advocate.<sup>8</sup>

### III.

#### Discussion

HRS § 269-7(a) authorizes the commission to examine the condition of each public utility, its financial transactions, and "all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Thus, the commission has jurisdiction to review proposed transactions of the parent entity or the affiliates of a regulated public utility under HRS § 269-7(a).

Upon review, we conclude that the Consummated Transaction falls under our purview and should be reviewed under

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<sup>7</sup>Consumer Advocate's Statement of Position at 3 (footnotes omitted).

<sup>8</sup>*Id.* at 4.

the requirements of HRS § 269-7(a). Nonetheless, HRS § 269-16.9 permits the commission to waive regulatory requirements applicable to telecommunications providers if we determine that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits the commission to waive the applicability of any of the provisions of HRS chapter 269 or any rule (except provisions of HRS § 269-34 or provisions of HAR chapter 6-80 that implement HRS § 269-34), upon a determination that a waiver is in the public interest.

Upon review of the record in this docket, particularly Excel's representations, we find the following: (1) much of the telecommunications services currently provided by VarTec and Excel are competitive; (2) VarTec and Excel are non-dominant carriers in Hawaii; (3) the Consummated Transaction is consistent with the public interest; and (4) competition, in this instance, will serve the same purpose as public interest regulation.

Based on the foregoing, the commission grants Excel's request for a waiver of the requirements of HRS § 269-7(a), to the extent applicable, regarding the Consummated Transaction, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.<sup>9</sup>

Notwithstanding the commission's waiver of the requirements noted above, our records do not indicate that Excel filed its revised tariffs consistent with the requirements set

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<sup>9</sup>At the same time, the commission will continue to examine a utility's application or petition on a case-by-case basis to determine whether the applicable requirements of HRS § 269-7(a) or any other related provision governing utility transactions, should be waived. The commission's waiver in this decision and order shall not be construed by any utility as a basis for not filing an application or petition involving similar transactions or circumstances.

forth in Decision and Order No. 19311. Although our records indicate that Excel filed numerous revised tariffs subsequent to the issuance of Decision and Order No. 19311, there is no indication that the Consumer Advocate ever received copies of these filings. Pursuant to HAR § 6-61-21, the Consumer Advocate shall be served two (2) copies of any documents filed with the commission. Thus, the commission agrees with the Consumer Advocate's recommendation, and will require Excel to provide the Consumer Advocate with two (2) copies of an updated version of its revised tariff filed with the commission within thirty (30) days from the date of this Decision and Order.

Finally, our review of the record indicates that VarTec is delinquent in the filing of their annual telecommunications relay service contributions for the period July 1, 2004 to June 30, 2005, established pursuant to: (a) Act 50, Session Laws of Hawaii 2003; and (2) Order No. 21049, filed on June 10, 2004, in Docket No. 04-0070. Accordingly, we conclude that our waiver in this Decision and Order should also be subject to the condition that VarTec timely satisfies this delinquency within thirty (30) days of the date of this Decision and Order.

#### IV.

##### Orders

##### THE COMMISSION ORDERS:

1. The requirements of HRS § 269-7(a), to the extent applicable, are waived with respect to the Consummated Transaction, subject to the applicable filing conditions described below.



2. Excel shall provide the Consumer Advocate with two (2) copies of an updated version of its revised tariff filed with the commission within thirty (30) days from the date of this Decision and Order.


3. Within thirty (30) days of this Decision and Order, VarTec shall timely satisfy the delinquency, noted in Section III, above.

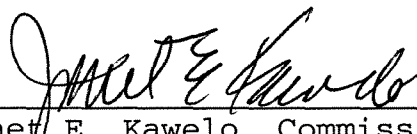
4. Excel and VarTec shall promptly comply with the filing conditions, noted above. Failure to promptly comply with these conditions may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii AUG - 5 2005.


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

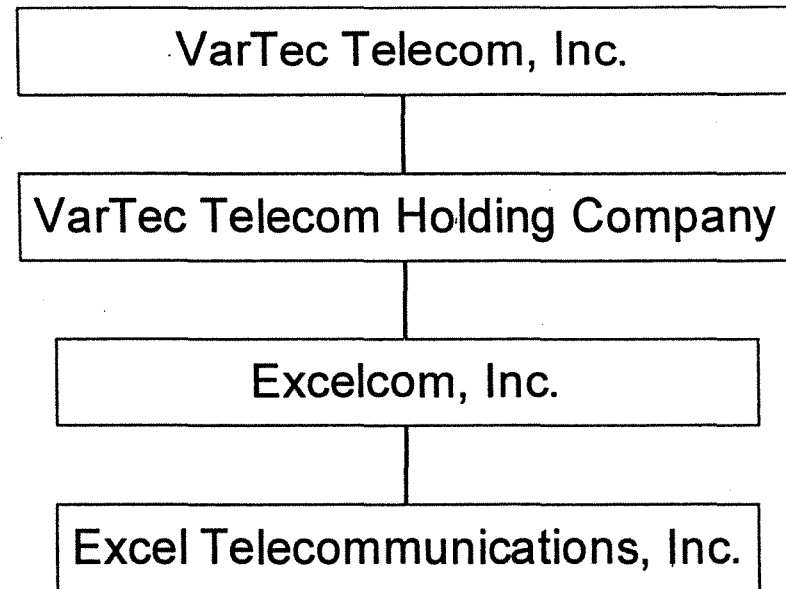
  
Kris N. Nakagawa  
Commission Counsel  
05-0125.eh

**VarTec Telecom, Inc.**  
**Corporate Organizational Chart Demonstrating Control of**  
**Excel Telecommunications, Inc.**

Prior to 10/31/2004



As of 10/31/04

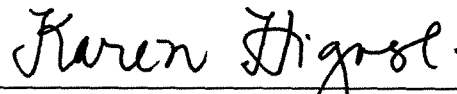


CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21970 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
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Karen Higashi

DATED: AUG - 5 2005